

ORDINANCE O-12-15

AN ORDINANCE CREATING TITLE 8, CHAPTER 5 OF THE CODE OF ORDINANCES (Removal of Salvageable Non-Structural Materials from Vacated Buildings)

Introduced by _____.

The Common Council of the City of Menasha does hereby ordain as follows:

SECTION 1: Amend Title 8 of the Code of Ordinances of the City of Menasha, Wisconsin, by creating Sec.8-5, as follows:

Title 8 – Health and Sanitation

CHAPTER 5

Removal of Salvageable Non-Structural Materials from Vacated Buildings

SEC. 8-5-1 REMOVAL OF SALVAGEABLE NON-STRUCTURAL MATERIALS FROM VACATED BUILDINGS.

- (a) **PURPOSE.** The purpose of this ordinance is to regulate the removal of scrap and salvageable equipment and materials from Vacated Buildings without immediate functional replacement thereof. The phrase “immediate functional replacement thereof” does not include replacement that occurs as part of a remodeling project pursuant to valid and subsisting building, heating, plumbing, or electrical permits. The Council finds the regulation of scrap and salvage activities is necessary in order to: prevent the complete abandonment of property, which reduces the chance that such property will, in the future, be devoted to any productive or enjoyable public or private use; prevent conditions that will create health and safety hazards and aggravate blight; prevent interference with the enjoyment of and reduction of the value of private property; and ensure salvage activities are completed in a timely manner and in such a fashion that prevents health and safety hazards, nuisances, and environmental pollution.
- (b) **INTERPRETATION.** In its interpretation and application the provisions of this ordinance shall be held to be the minimum requirements and shall not be deemed a limitation or repeal of any other power granted by the Wisconsin Statutes. Where any terms or requirements of this ordinance may be inconsistent or conflicting, the more restrictive requirements or interpretation shall apply.
- (c) **ADMINISTRATION.** The Community Development Director shall have general supervision of the administration and enforcement of this Chapter.
- (d) **APPLICABILITY.** The requirements of this ordinance apply to all persons within the City of Menasha and to all waste, refuse, or recyclable materials generated within the City of Menasha.

SEC. 8-5-2 DEFINITIONS.

- (a) “Owner” means the title holder(s) to real property on which stands any Vacated Building or structure from which any Salvageable Material is removed or proposed to be removed.
- (b) “Operator” means any person, including a corporation or other business entity or holder of a security interest, that undertakes, directs, or allows the removal of Salvageable Material from a Vacated Building within the jurisdictional limits of the City of Menasha.
- (c) “Salvageable Material” means real or tangible personal property that:
 - 1. is man-made;
 - 2. is affixed to real property or any improvement to real property;
 - 3. is detachable from real property or any improvement to real property; and/or

4. is proposed to be removed or has been removed for potential or intended resale value, re-use, or scrap or recycling purposes.

Salvageable Materials shall include any such materials detached from real property or any improvement to real property without a permit after the effective date of this ordinance.

- (d) "Salvaging" shall mean the removal of fixtures, equipment, or building materials from a residential, commercial, or industrial structure following cessation of residential use or business operations, unless such removal is for the purpose of continuing a previous or similar use.
- (e) "Tenant" means a person or entity entitled by agreement to occupy the building or structure, or portion thereof, from which any Salvageable Material is removed.
- (f) "Vacated Building" means a building or structure, or portion thereof, which had a principal non-residential use as its most recent use, of which principal use has ceased. The cessation of the primary activities constituting the principal use shall be determinative of whether the principal use has ceased. The presence of personnel in the building or structure is not determinative of whether the use has ceased.

SEC 8-5-3 EXCLUSIONS.

This Ordinance does not apply to the following:

- 1. Salvaging operations at structures where the most recent allowable use by law was residential;
- 2. Salvaging operations at non-residential structures under ten thousand square feet (10,000 sq. ft.);
- 3. Items/materials removed where replacement will occur as part of a remodeling process over time pursuant to a valid and subsisting building, heating, plumbing, or electrical permit;
- 4. Salvaging operations that occur as part of an approved demolition plan, pursuant to a valid demolition permit or otherwise, in which the Permit Holder/Owner/Operator is obligated to complete said demolition within a specified time frame;
- 5. Equipment, items, or supplies removed by the Owner for personal re-use; and/or
- 6. Equipment, items, or supplies owned and removed by the Tenant during the term of a written lease.

SEC 8-5-4 RECYCLING.

- (a) The Permit Holder shall cause to be salvaged, reused, or recycled all of the following material/items removed and debris produced on-site as part of the salvaging permit activities:
 - 1. Concrete, brick, and/or wood, unless it has been rendered non-recyclable or non-re-useable by the application or attachment of paint, stains, varnish, or other liquids or solids;
 - 2. Non-toxic metals; and
 - 3. Non-asbestos containing shingles.
- (b) The City of Menasha maintains the right to suspend requirements of this section if the market for above materials changes, making compliance unattainable, or if the condition of the material(s) and/or proximity to recycling/re-use facilities makes compliance impracticable, as determined by the Code Official.

SEC 8-5-5 PARTIAL EXEMPTION.

A partial exemption is allowed under this Ordinance for items and materials removed for the sole purpose of historical or cultural preservation. A request for exemption shall be filed in the Community Development Department. The request for exemption shall include documentation of historical or cultural significance acceptable to the Code Official, which may include written request for preservation by a historic society or equivalent.

SEC. 8-5-6 PERMIT.

- (a) No person, corporation, or other business entity or holder of a security interest may remove, direct the removal of, or allow to be removed any Salvageable Material from a Vacated Building unless such removal is performed pursuant to a valid permit issued pursuant to this ordinance. The Owner and Permit Holder shall be jointly and severally responsible for complying with the terms of any permit issued pursuant to this ordinance.
- (b) PERMIT FEES. No permit shall be issued or renewed without the payment of the applicable fee having been received by the Community Development Department. Permit fees shall be established by the Common Council.

SEC. 8-5-7 PERMIT APPLICATION.

- (a) The applicant may be the Owner, a Contractor hired by the Owner, Tenant, or the holder of a security interest in the property, Vacated Building, or the Salvageable Material. Under all circumstances, the applicant, if other than the Owner, shall be jointly and severally responsible for compliance with the terms of this Ordinance.
- (b) Application for permit, whether initial or renewal, shall be made in writing and filed in the Community Development Department on forms provided by the City of Menasha. The application shall include the following items.
 - 1. Location and square footage of building(s) or structure(s).
 - 2. Name, address, and contact information of the Owner of the building(s) or structure(s).
 - 3. Names, addresses, and contact information for contractors engaged to carry out the activity.
 - 4. Plan for removal of Salvageable Material including the following details:
 - i. Project schedule and budget;
 - ii. Inventory and projected quantities (by weight or volume) of materials to be removed from the building for salvage purposes;
 - iii. Proposed disposition of Salvageable Materials;
 - iv. Dust, noise, and odor control;
 - v. Hours of operation;
 - vi. Fire suppression;
 - vii. Traffic safety and public infrastructure protection;
 - viii. Site security;
 - ix. Building and grounds management and restoration; and
 - x. Proposed post-salvage property ownership and use, if known.
 - 5. Plan for removal of hazardous wastes/materials.
 - i. Hazardous materials inventory including raw materials, waste materials, asbestos containing materials, and (with respect to any portion of the building, structure, or Salvageable Material to be altered in the course of the work) lead painted surfaces and PCB-containing materials.
 - ii. Hazardous materials handling, management, and disposal prior to salvaging.
 - iii. Proposed environmental monitoring or remediation.
 - 6. Plan for removal of recyclable materials.
 - i. Inventory and estimate (by weight or volume) of materials to be recycled.
 - ii. Proposed disposition, ownership, and use of materials to be recycled, if known.
 - iii. Percentage of material to be recycled. This percentage should only include non-salvageable material not identified as hazardous material or waste.
 - 7. Proof of required demolition/renovation notifications to the appropriate State regulatory agency(ies).
 - 8. The Code Official, or other entities of the City of Menasha, may require additional information of a specific applicant.

SEC 8-5-8 INVESTIGATION.

The Community Development Director, or designee of, shall notify the Building Inspector, Director of Public Works, Public Health Officer, and Fire Chief, of each new application or request for renewal. These officials shall inspect or cause to be inspected each application and the premises, together with such other investigation as shall be necessary to determine whether a permit shall be issued taking into consideration all applicable regulations, ordinances, and laws. These officials shall furnish to the Community Development Director, in writing, the information derived from such investigation, accompanied by a recommendation as to whether a permit should be granted or denied. No permit shall be renewed without a re-inspection of the premises and report as originally required.

SEC 8-5-9 PERMIT GRANT.

- (a) The Community Development Director shall consider such permit applications only after receiving the recommendations as required under Section 8-5-8 above.
- (b) Consideration shall be given to the following: the application; the reports received under Section. 8-5-8; the expertise of the applicant; the effect of the proposed operation on the surrounding neighborhood; the effect on the community of having a stripped structure remain if the structure is not proposed to be immediately razed or immediately renovated; the presentation, if any, of the applicant; the comments of the public; and other such matters germane to the decision.
- (c) In granting a permit, the Community Development Director shall address the following matters: proof of insurance; the amount of the Irrevocable Standby Letter of Credit to be required of the Permit Holder as a condition of issuance of the permit and as a requirement of operation; the justification for drawing against and content of the presentment required to draw against the Irrevocable Standby Letter of Credit; other State or local permits as required by law, rule, or regulation that must be obtained as a condition of issuance of the permit or as a requirement of operation; reporting period for submittal of required reports pursuant to Section 8-5-17 herein; percentage of non-salvageable materials required to be recycled; reasonable special operating requirements to be required of the Permit Holder in addition to those listed in Subsection 8-5-7 herein; and such other matters or limitations as the Community Development Director determines necessary to protect the public interest.

SEC 8-5-10 IRREVOCABLE STANDBY LETTER OF CREDIT.

- (a) As a condition of issuance of the permit, the Permit Holder shall provide and maintain in effect an Irrevocable Standby Letter of Credit naming the City of Menasha as beneficiary in an amount required by the Administrative Services Director and in a form approved by the City of Menasha Attorney. The City Attorney shall also approve the form and content of the draw order and all necessary presentment required to compel payment by the issuer to the City of Menasha of all funds subject to the Irrevocable Standby Letter of Credit.
- (b) The Irrevocable Standby Letter of Credit shall be the guarantee of performance by the Permit Holder. The Irrevocable Standby Letter of Credit must be issued by a financial institution certified by the State to conduct such business within the State of Wisconsin, allowing for direct draw by the City of Menasha upon presentment to the issuing bank, without court action or approval by Permit Holder, to complete work or repair damage that was the obligation of the Permit Holder. The Irrevocable Standby Letter of Credit must contain as part of its provisions that it will be maintained constantly in force as an obligation to the City of Menasha for no less than one year after project completion as reasonably determined by the Community Development Director or one year after the expiration of a permit issued under this section to the Permit Holder, whichever is later.
- (c) In determining the required amount of the Irrevocable Standby Letter of Credit the Administrative Services Director shall consider: the recommendations, if any, of the reports of city officials; the expertise of the applicant; the capitalization of the applicant; the scope of the proposed project; the

cost of rectifying the possible environmental hazards that could be created; the effect of the proposed operation on the surrounding neighborhood; the cost of remediation of the City of Menasha; and potential inability of the Permit Holder to fulfill its obligations. Annually, upon documented request of the Permit Holder, the Administrative Services Director may review the pertinent facts and decide to reduce the amount of the required Letter of Credit in accordance with work completed or threats mitigated. In the circumstance that the Administrative Services Director determines the requirements to obtain an Irrevocable Standby Letter of Credit are unreasonable, the Administrative Services Director may, in the exercise of his or her discretion, authorize one or more alternate forms of security in lieu of an Irrevocable Standby Letter of Credit.

SEC 8-5-11 PERMIT TERM.

- (a) The initial term for a permit under this section shall be for a period of one (1) year from the date of issue. Renewals and renewal term shall be at the discretion of the Director of Community Development.
- (b) ASSIGNMENT. No permit issued pursuant to this ordinance is assignable or transferable without the advance written permission of the Director of Community Development, which shall not be granted unless the Permit Holder and prospective assignee demonstrate to the satisfaction of the Director of Community Development that assignee is capable of completing the project and all required forms of insurance and financial assurance are made effective prior to the assignment.

SEC 8-5-12 GENERAL OPERATING REQUIREMENTS.

- (a) The following general operating requirements shall apply to the Permit Holder and those working for Permit Holder subject to terms of the permit in accordance with the provisions of the ordinance:
 - 1. The valid permit issued pursuant to this ordinance shall be plainly displayed on the premises upon which the building is located.
 - 2. The building and premises shall, at all times, be maintained in as clean, neat, and sanitary of a condition as such premises will reasonably permit.
 - 3. No garbage, refuse, or other waste likely or susceptible to give off a foul odor or attract vermin shall be kept on the premises, except for domestic garbage kept in rodent-proof covered containers, which are removed from the premises as often as necessary to provide a sanitary, odor free, and vermin free environment.
 - 4. Work done under this permit shall be performed in accordance with the permit and any plans approved by the Community Development Director and is subject to inspection by the Code Official and other inspectors as provided in this ordinance. Any violation of the permit shall be deemed a violation of this ordinance.
 - 5. As a condition of issuing the permit, a Permit Holder shall maintain insurance policies during the life of the permit in the following minimum amounts. These policies shall be primary and provide coverage work performed on the property or associated with the work under the permit and shall provide certificates issued by the carriers as proof of all required coverages:
 - i. Automobile Liability (Owned, non-owned, leased): Twenty-five Hundred Thousand Dollars (\$250,000) each person/Five Hundred Thousand Dollars (\$500,000) each accident for Bodily Injury and One Hundred Thousand Dollars (\$100,000) for Property Damage
 - ii. Bodily Injury: One Million Dollars (\$1,000,000) each occurrence.
 - iii. Property Damage: One Million Dollars (\$1,000,000) each occurrence.
 - iv. Pollution Legal Liability: Five Million Dollars (\$5,000,000) each loss where risk is presented of exacerbation of existing environmental pollution or discharge of any hazardous waste to the environment or asbestos removal, abatement, remediation, or dumping/disposal in a Federal or State regulated facility is required; the Community Development Director may require a greater or lesser minimum amount down to and

including zero (\$0) of Pollution Legal Liability insurance policy, depending on the circumstances of the project that is the subject of the permit.

- v. Workers' Compensation: Statutory Limits.
 - vi. Umbrella Liability: Two Million Dollars (\$2,000,000) over the primary insurance coverages listed above.
6. No scrap salvage or debris, which is temporarily stored on the premises, shall be allowed to rest or protrude over any public rights-of-way or public property or become scattered about or blown off the premise.
 7. No mechanized process whatsoever shall be utilized on premises to reduce the volume of salvageable material or debris after such salvageable material has been detached from the real property, unless a special exception is provided by the Community Development Director in conjunction with a specific permit. Such prohibited mechanized processes include, but are not limited to, crushing and shredding.
 - i. There shall be strict compliance with SEC. 11-7-3 subsection P.
 - ii. There shall be strict compliance with SEC. 11-7-8 subsection O.
 8. No premises or building subject to a permit shall be allowed to become a public nuisance or be operated in such a manner as to adversely affect public safety, health, or welfare.
 9. There shall be full compliance with the City of Menasha City Code, as well as any city, county, state, or federal regulations which may be applicable. These include, but are not limited to Title 15; Title 5, Section 3; and Title 8, Section 1.
 10. The Permit Holder shall, during the salvage process, maintain the work site in a safe and secure condition.
 11. The Permit Holder shall keep a log of all shipments to and from the work site during the project, including the date, time, transport company, vehicle license number, and description of type and amount of material transported.
 12. The Permit Holder shall identify, handle, manage, store, and dispose of all wastes, lead, asbestos, waste oils, hazardous materials, and hazardous substances as provided in the plan submitted as part of the application and permitting process. In the event of any changed conditions or plans, the Permit Holder is required to promptly notify the Director of Community Development in order to pursue an amended permit.
 13. The Permit Holder shall dispose of building debris in a licensed landfill except for salvaged and recycled materials. At any time, the Permit Holder shall produce to the Community Development Director receipts and/or an itemized list of debris disposed of by dumping, recycling, or salvage.
 14. The Permit Holder shall meet all recycling requirements as provided in the approved permit.
 15. The Permit Holder shall be responsible for disconnections of utilities, including plumbing and electrical, necessary for safe conduct of the salvaging process and shall provide evidence that the necessary disconnections have been accomplished.
 16. The Permit Holder shall restore the site and/or Vacated Building to the conditions set forth in the approved plans in the permit.
 17. The Permit Holder shall comply with all orders of the Community Development Director imposed upon granting of the permit.
 18. The Irrevocable Standby Letter of Credit imposed as a condition of issuance of the permit shall be maintained in full force and effect at all times until one year following the Community Development Director's finding project completion.
 19. Permit Holder must provide to the City of Menasha, and must maintain current, a list of contractors doing work that is subject to a permit issued pursuant to this ordinance, which shall include proof of valid and subsisting policies of insurance in satisfaction of the General Operating Requirements specified herein. As used herein, the phrase "maintain current" means that the list filed with the City of Menasha is updated by the Permit Holder as necessary to comply with the ordinance prior to each contractor commencing work pursuant to the permit.

20. Permit Holder shall also ensure that subcontractors have appropriate insurance as determined by the Community Development Director. This may include coverage under the Permit Holder's policy, individual coverage, or a combination thereof. The Community Development Director may also require subcontractors to obtain separate permits pursuant to this Ordinance based on the type of proposed activities or extent or complexity of the salvaging activities proposed.

SEC 8-5-13 INSPECTIONS.

- (a) Permit Holders and property owners shall allow inspection by representatives of the City of Menasha having enforcement powers to inspect the premises subject to the permit, as often as may be required to allow said representatives to perform their duties and assure compliance with this ordinance, as well as state and federal laws. Inspections shall be made during normal hours of business operation except when the presence of emergency circumstances which require prompt action to protect the public health, safety, and welfare or to preserve evidence of noncompliance with this ordinance or state or federal laws.
- (b) Inspection may include inspection of the entire property subject to the permit, including buildings, structures, basement, sub-basements, vaults, and other areas of the property.
- (c) The unreasonable failure to allow inspections shall be grounds for denial, suspension, or revocation of the permit.
- (d) Inspections may include but are not limited to: taking wipe samples; waste, structural or product sampling; sampling of pits; the logging, gauging, and sampling of existing wells; videotaping; preparing site sketches; taking photographs; and/or testing or sampling the groundwater, soil, surface water, sediments, air, soil vapor, or other material.

SEC 8-5-14 NON-RENEWAL, SUSPENSION OR REVOCATION.

- (a) If in the opinion of the Community Development Director, the public is subject to imminent danger due to violation of any one or combination of the General Operating Requirements, the Community Development Director may issue an order to the violator or the Permit Holder requiring immediate cessation of those operations giving rise to the imminent danger. The recipient of any such order shall cause such operations to cease as directed by the Code Official. Failure to maintain insurance, a Letter of Credit as required, or to permit inspection as required are each per se violations implicating imminent danger to the public necessitating an order to cease all operations.
- (b) There is no right or expectation of permit renewal. The permit may be renewed at the discretion of the Community Development Director upon application of a Permit Holder as described in Section 8-5-7 of this ordinance.
- (c) If the Community Development Director decides not to renew, suspends, or revokes a permit, a written report of such action shall be made, which shall include findings of fact, conclusions, and reasons for the action taken with respect to the permit.
- (d) The Permit Holder shall be provided with a copy of the report and may make a written appeal of the decision to the Common Council to be considered at its next regular meeting following the issuance of the report. The Common Council, after considering the Community Development Director's report and any arguments presented by the Community Development Director or the Permit Holder, may sustain, modify, or overrule the suspension, revocation, or nonrenewal.

SEC 8-5-15 VIOLATIONS AND LIABILITY.

- (a) It shall be a violation of this ordinance to perform, conduct, direct, or allow removal of Salvageable Material except in conformance with a valid permit issued pursuant to this ordinance.
- (b) It shall be a violation of this ordinance to disobey or act contrary to any order issued pursuant to this ordinance.

- (c) The Owner and Permit Holder shall be jointly and severally liable for any violation of this ordinance and any violation of any condition of the permit pursuant to this ordinance, whether caused by act or omission, including applicable fines and penalties together with the City of Menasha's costs of enforcement, including attorneys' fees.

SEC 8-5-16 ENFORCEMENT, FINES, AND PENALTIES.

The Community Development Director shall have the primary responsibility to enforce this ordinance. Violations of this ordinance shall be subject to the general provisions of Section 1-1-7. For the purpose of calculating fines and penalties, each day of continuing violation shall constitute a separate offense. Any violation of this ordinance constitutes a public nuisance and in addition to any other remedies provided or allowed the City of Menasha may apply to a court of competent and local jurisdiction for injunctive relief and the assessment of damages including attorneys' fees and costs.

SEC 8-5-17 REPORTING.

- (a) Permit Holders shall provide reports to the Community Development Director in accordance with the reporting requirements specified in the permit as approved by the Community Development Director. The following reports are required.
1. Salvageable Materials report that identifies the type, quantity, and disposition of Salvageable Materials removed from the property during the reporting period.
 2. Hazardous wastes/materials report that identifies the type, quantity, and disposition of hazardous wastes/materials removed from the site during the reporting period. This report should be accompanied by supporting documentation of disposal, name and contact information of haulers, and copies of any applicable permits/exemptions.
 3. Waste report that identifies the type, quantity, and disposition of non-salvageable waste materials removed from the site.
 4. Any instances of environmental monitoring performed during the reporting period and results of the same.
- (b) Upon demand of the Community Development Director the following reports must also include:
1. Supporting documentation of removal and disposition of materials which shall include weigh tickets, bills of lading, sales receipts, and chain of custody logs or equivalent documentation.
 2. A statement by the Permit Holder that documentation supporting compliance with this ordinance will be maintained for two years from submission of the reports.
 3. A statement from the Permit Holder that documentation supporting the information in the reports is truthful and accurate.

SECTION 2: This ordinance shall become effective upon its passage and publication as provided by law.

Passed and approved this _____ day of _____ 2015.

Donald Merkes, Mayor

ATTEST:

Deborah A. Galeazzi, City Clerk